



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

October 20, 2005

IN REPLY PLEASE

REFER TO FILE: **PJ-2**

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**LAC+USC MEDICAL CENTER REPLACEMENT PROJECT
APPROVAL OF SETTLEMENT AGREEMENT
CONSTRUCTION CHANGE ORDER
CONTRACT PW-12641; MCCARTHY/CLARK/HUNT, A JOINT VENTURE
SPECS. 6550; C.P. 70787
SUPERVISORIAL DISTRICT 1
4 VOTES**

**JOINT RECOMMENDATION WITH THE CHIEF ADMINISTRATIVE OFFICER THAT
YOUR BOARD:**

Approve and authorize the Director of Public Works to execute a change order to settle outstanding disputed issues as described below for a not-to-exceed amount of \$11,000,000:

REASON AND SCOPE

Unforeseen Condition	<input type="checkbox"/>	Regulatory Agency Requirement	<input checked="" type="checkbox"/>
Drawing Coordination	<input checked="" type="checkbox"/>	Previously Approved Scope Change	<input type="checkbox"/>
Errors and Omissions	<input checked="" type="checkbox"/>		

From the outset of the LAC+USC Medical Center Replacement Project construction phase, it has been Public Works' goal to establish an open line of communication with the general contractor, McCarthy/Clark/Hunt, a Joint Venture (MCH), in order to resolve contentious contract issues in an expeditious and collaborative manner with a focus on early containment of cost impacts to either party. Public Works and MCH agreed early on to establish executive-level participation in the change order resolution process to assure all reasonable efforts to resolve disputes were exhausted in order to avoid potentially protracted and expensive litigation.

From April 2003 through July 2005, Public Works successfully negotiated and executed 1,806 change orders with MCH having an aggregate value of \$17,161,896. In addition, as discussed below in the Contingency Budget Summary section of this Board letter, Public Works and MCH are still in the process of negotiating various pending change orders, whose total value as quoted by MCH is \$21,311,104. Public Works anticipates that this total will be amicably negotiated downward to roughly 60 percent of that total (approximately \$12,786,662), which is consistent with the historical rate evidenced on this project.

However, during this same duration, MCH and Public Works ultimately reached an impasse concerning 23 separate disputed issues relative to which MCH was seeking compensation in the total amount of \$24,623,875. (It is these 23 disputed issues that are the subject of the change order we have negotiated and are now recommending.) Public Works scheduled a series of senior- and executive-level meetings throughout June, July, and August 2005 with MCH in order to push for final closure of these disputed issues, avoid costly claim litigation with the contractor, and foster a collaborative partnership for the balance of construction. The 23 disputed issues, listed in Enclosure A, were primarily associated with claimed additional work that was allegedly not indicated on the original contract documents (errors and omissions), claimed additional work allegedly required due to jurisdictional interpretations and/or impacts (jurisdictional), claimed delay impact costs associated with work allegedly not clearly detailed or coordinated in the contract documents (extended general conditions), or the claimed failure of the general contractor to provide a fair market value quote for the actual change in construction work.

After conclusion of the executive-level reviews in August, it remained the opinion of Public Works that a significant cause of the additional costs was due to management decisions made by, or coordination issues arising between, MCH and their various subcontractors. However, Public Works also acknowledged that the County was responsible for a portion of the cost of several of these disputed issues. As a result of this negotiation process, Public Works and MCH have agreed, subject to your Board's

approval, to a change order whereby, among other concessions, MCH is reducing the maximum total amount of its change order demand from \$24,623,875 to \$11,000,000. The proposed change order fully resolves all of the disputed 23 issues and includes, but is not limited to, the following terms and conditions:

1. The County agrees to pay MCH \$10,000,000 upon full execution of the change order. In addition, if MCH successfully demonstrates, after achieving construction completion in accordance with the contract documents, that it has kept future change orders attributable to errors and omissions in the plans to \$8,000,000 or less, the County agrees to pay MCH an additional \$1,000,000 (which would increase the total value of this change order to \$11,000,000). Conversely, if after construction completion is achieved, the total amount of future change orders attributable to errors and omissions in the plans exceeds \$8,000,000, MCH agrees they will not be entitled to the additional \$1,000,000 payment (and the total value of this change order would thus be capped at \$10,000,000, not \$11,000,000).
2. Waivers/Releases of the County by MCH and MCH Indemnification of the County
 - a. MCH agrees to release all claims against the County and its architect relating to the 23 disputed issues referenced in Enclosure A as well as relating to all previous change orders that have been previously executed by the County and MCH.
 - b. MCH agrees to release any and all claims arising out of the project against the County and its architect for delay, acceleration, disruption, impact, cumulative impact, ripple effects, loss of productivity and home and field office overhead through August 1, 2005.
 - c. MCH waives and releases any pass-through claims of subcontractors and suppliers (relating to the 23 disputed issues that are encompassed by the change order) against the County and its architect and agrees to defend and indemnify the County and its architect in the event MCH's subcontractors or suppliers bring any such claim against MCH and/or directly against the County.

3. Waivers/Releases of Claims by the County; Construction Completion Date
 - a. The current construction completion date of April 26, 2007, will remain unchanged. MCH will endeavor to recover the 43 calendar days of delay indicated in the June 2005 schedule update at no additional cost to the County. If, however, MCH does not recover said 43 calendar days, the County waives its right to recover liquidated damages in connection with such 43 days of delay.
 - b. The County will not bring any claims under the California and Federal False Claims Act relative to previously executed change orders and items listed in Enclosure A.
4. MCH will exercise reasonable efforts to work with their subcontractors, and the County and its architect, to ensure that the total cost of future change orders attributable to errors and omissions in the plans from August 1, 2005, though construction completion does not exceed \$8,000,000 as noted above. MCH will relinquish its right to the final \$1,000,000 payment under this change order if such cost containment is not achieved.
5. The County agrees to accept early turnover of the Outpatient building and the Central Plant on or about September 1, 2006, when the work meets the requirements of construction completion in accordance with the contract documents. The County will assume a portion of the utility and maintenance costs associated with such early acceptance of each building, currently estimated at \$900,000. Health Services will request funding for these costs in their Fiscal Year 2006-07 budget request.
6. The parties agree to establish a periodic team-building procedure to foster a cooperative and supportive team to achieve the successful completion of the project.
7. The parties agree to jointly establish a final inspection procedure detailing the quality, material, time frame, and acceptance procedures of the work.
8. MCH agrees to withdraw all currently unsettled pricing proposals relating to the work of its subcontractor Performance Contracting, Inc. (PCI) and will conduct a thorough review and validation of PCI's pricing information prior to resubmittal to the County.

We have reviewed this matter as well as the potential cost impact with the Project Advisory Committee. The claimed extra work that is subject of this change order is considered to be within the scope of the contract documents.

CONTINGENCY BUDGET SUMMARY

CHANGE SUMMARY					
Contingency Budget	Executed Change Orders	Board-Approved Changes Pending Execution	Impact of This Action	Remaining Contingency Budget	Percentage Remaining
\$54,195,027	\$23,330,061	\$6,243,352	\$11,000,000	\$13,621,614	25.13%

Notes:

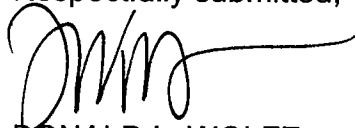
1. The executed change order amount shown above reflects executed changes as of October 17, 2005.
2. The aggregate value of executed construction change orders does not include the value of potential changes currently under review. The merit and scope of each issue must first be evaluated and then the value negotiated. The combined value of these issues, as quoted by the contractor, could be as high as \$32,311,104, which includes change orders in the not-to-exceed amount of \$2,620,579, the approval of which is being requested as a separate item on this agenda. Of the \$32,311,104 in potential issues, this \$11,000,000 action has been negotiated by Public Works leaving \$21,311,104 open for negotiations. Historically, Public Works settles quotes from the contractor at less than 60 percent of the quoted value. Therefore, the anticipated value of the pending issues is approximately \$23,786,662, which includes the \$11,000,000 for the proposed settlement. When added to the \$23,330,061 of change orders executed through October 17, 2005, there is an estimated total current potential change exposure of \$47,116,723 against the \$54,195,027 Board-approved contingency.

The Honorable Board of Supervisors
October 20, 2005
Page 6

CONCLUSION

Please return one adopted copy of this letter to the Chief Administrative Office (Capital Projects Division) and Public Works.

Respectfully submitted,



for DONALD L. WOLFE
Director of Public Works

DAVID E. JANSSEN
Chief Administrative Officer

BB:pdw

\\DRAFT Settlement Board Letter 10-24-05.doc

Enc.

cc: County Counsel
Department of Health Services (Fred Leaf, Azar Kattan)
Project Advisory Committee (A. Redmond Doms, Jerry Epstein, Nick Patsaouras)

ENCLOSURE A

**LAC+USC MEDICAL CENTER REPLACEMENT PROJECT
APPROVAL OF SETTLEMENT AGREEMENT
CONSTRUCTION CHANGE ORDER
CONTRACT PW-12641; MCCARTHY/CLARK/HUNT, A JOINT VENTURE
SPECS. 6550; C.P. 70787
SUPERVISORIAL DISTRICT 1
4 VOTES**

	Disputed Issues Items	Change Type
1	Additional Detailing for Additional Fittings and Offsets	Extended GC's
2	Seismic Attachments to Pipe (IPT and D&T Buildings)	Jurisdictional
3	Underground Plumbing Change of Material in IPT	E & O
4	Seismic Bracing of Air Terminal Units	E & O
5	Shaft Steel Items associated with Med Center Mechanical	E & O
6	Sway Bracing of Ductwork Terminal Points	E & O
7	Ductwork Hanger Strap Spacing	E & O
8	Central Plant Sequencing Delays, Impacts, and Material Price Escalation	E & O
9	No-Hub Pipe Joints Manufacturers Installation Requirements	E & O
10	Shaft Steel Impacts and Additional Framing and Drywall	E & O
11	Fireproofing Substrate	Jurisdictional
12	Plumbing Carriers	E & O
13	Windows and Sills Framing and Drywall Conflicts	E & O
14	Cross Corridor Doors Framing and Drywall Conflicts	E & O
15	Remobilization and Out of Sequence Work as related to Item 14	Extended GC's
16	Mechanical Shaft Bottoms	E & O
17	Compressible Filler Material	E & O
18	Vented Deck	E & O
19	Grounding Wire Penetrations	E & O
20	ADA Dishwasher	E & O
21	Failed Soldered Joints/Change of Material – IPT	E & O
22	Balance of Central Plant Subcontractor Issues	E & O
23	Masonry Delays in Jail Area	Extended GC's